

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

**SUMMARY ORDER**

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING TO A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 16<sup>th</sup> day of February, two thousand sixteen.

PRESENT:

ROSEMARY S. POOLER,  
DENNY CHIN,  
SUSAN L. CARNEY,  
*Circuit Judges.*

MAMUKA GETSADZE,  
*Petitioner,*

v.

14-2238  
NAC

LORETTA E. LYNCH,<sup>1</sup> UNITED STATES  
ATTORNEY GENERAL,  
*Respondent.*

FOR PETITIONER: Berdymurat Berdyev, Woodbridge, New Jersey.

FOR RESPONDENT: Joyce C. Branda, Acting Assistant Attorney General, Linda S. Wernery, Assistant Director, Christina Parascandola, Trial Attorney,

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<sup>1</sup>Loretta E. Lynch is automatically substituted as the respondent in this case pursuant to Federal Rule of Appellate Procedure 43(c)(2).

1                                   Office of Immigration Litigation,  
2                                   United States Department of Justice,  
3                                   Washington, D.C.  
4

5           UPON DUE CONSIDERATION of this petition for review of a  
6 Board of Immigration Appeals ("BIA") decision, it is hereby  
7 ORDERED, ADJUDGED, AND DECREED that the petition for review is  
8 DENIED.

9           Petitioner Mamuka Getsadze, a native and citizen of  
10 Georgia, seeks review of a May 27, 2014 decision of the BIA  
11 denying his motion to reopen to allow him to apply for asylum  
12 and withholding of removal. *In re Mamuka Getsadze*, No. A087  
13 415 021 (B.I.A. May 27, 2014). He also moves the Court for  
14 judicial notice of certain new documents and for a stay of  
15 removal. We assume the parties' familiarity with the  
16 underlying facts and procedural history in this case.

17           Getsadze moved the BIA to reopen proceedings so that he  
18 could apply for asylum and withholding of removal. He claimed  
19 to have a well-founded fear of future persecution on the ground  
20 that in recent elections, his political party, the United  
21 National Movement ("UNM"), lost to the Georgian Dream Party,  
22 which then launched investigations and prosecutions of UNM  
23 party members and officials.

1        "We review the denial of motions to reopen immigration  
2        proceedings for abuse of discretion, mindful that motions to  
3        reopen 'are disfavored.'" *Ali v. Gonzales*, 448 F.3d 515, 517  
4        (2d Cir. 2006) (quoting *INS v. Doherty*, 502 U.S. 314, 322-23  
5        (1992)). An alien seeking to reopen proceedings may move to  
6        reopen no later than 90 days after the final administrative  
7        decision was rendered. 8 U.S.C. § 1229a(c)(7)(C)(i); 8 C.F.R.  
8        § 1003.2(c)(2). That time limitation does not apply if the  
9        motion is "based on changed country conditions arising in the  
10       country of nationality . . . if such evidence is material and  
11       was not available and would not have been discovered or  
12       presented at the previous hearing." 8 U.S.C.  
13       § 1229a(c)(7)(C)(ii).

14       Getsadze's motion was untimely, and so he needed to  
15       demonstrate that the Georgian Dream party's ascendancy is  
16       material to his claims for asylum and withholding of removal.  
17       He could do this by demonstrating either that there exists a  
18       pattern or practice of persecution of those similarly situated  
19       or that he will be singled out for persecution. See 8 C.F.R.  
20       §§ 1208.13(b)(2) (asylum), 1208.16(b)(2) (withholding of  
21       removal). The BIA had the discretion to find that Getsadze  
22       demonstrated neither.

1       The background materials Getsadze submitted describe the  
2 new Georgian government's efforts to investigate and prosecute  
3 those who led the prior UNM regime, including the former  
4 president and various ministers. But Getsadze does not claim  
5 to have been a leader of the UNM; he never held any governmental  
6 office or elevated position within the party. Rather, based  
7 on his own submission, his UNM-related conduct was limited to  
8 peaceful demonstrations more than a decade ago. Consequently,  
9 the BIA was entitled to find that Getsadze is not similarly  
10 situated to the UNM leaders who are being targeted in Georgia.

11       Getsadze contends that the BIA overlooked "evidence of his  
12 relentless dedication and participation in the UNM activities,"  
13 which puts him in the same posture as UNM leaders. For this  
14 proposition, he cites affidavits from two members of the  
15 Georgian-American community. The BIA was not compelled to  
16 credit these affidavits; and even if it did credit them, it was  
17 not compelled to equate activism with party leadership. See  
18 *Jian Hui Shao v. Mukasey*, 546 F.3d 138, 169 (2d Cir. 2008) ("[W]e  
19 do not demand that the BIA 'expressly parse or refute on the  
20 record each individual argument or piece of evidence offered  
21 by the petitioner.'" (quoting *Zhi Yun Gao v. Mukasey*, 508 F.3d  
22 86, 87 (2d Cir. 2007)); *Siewe v. Gonzales*, 480 F.3d 160, 168

1 (2d Cir. 2007) ("[R]ecord support for a contrary inference—even  
2 one more plausible or more natural—does not suggest error.").

3 Getsadze also contends that the country conditions  
4 evidence demonstrates that "regular UNM members and activists  
5 are equally being subjected to the current government's abuse,  
6 which includes harassment, detention, interrogations and  
7 physical abuse." Pet. Br. 28. He cites four documents in the  
8 administrative record. Not one supports this proposition.

9 In his merits brief, Getsadze appears to disavow a claim  
10 that the new Georgian regime will single him out for harm. In  
11 any event, the BIA had the discretion to conclude that Getsadze  
12 did not show that the Georgian government will target him. His  
13 mother stated that government officials were seeking to recoup  
14 \$50,000 that the prior administration allotted to Getsadze for  
15 his personal use. But Getsadze's only evidence of the harm  
16 allegedly threatened--the sealing and seizure of his apartment  
17 in Georgia--was his mother's secondhand account from neighbors.  
18 His Georgian attorney's account was third-hand, reliant on the  
19 mother's report of what had transpired and a "government record"  
20 of the \$50,000 transfer that is absent from the administrative  
21 record. The BIA was entitled to find that these statements did  
22 not demonstrate that the Georgian government is interested in

1   harming Getsadze. *Xiao Ji Chen v. U.S. Dep't of Justice*, 471  
2   F.3d 315, 341-42 (2d Cir. 2006).

3       The BIA suggested that Getsadze could have submitted  
4   documentary evidence that the Georgian government intends to  
5   prosecute him for the \$50,000 allotment. Getsadze argues that  
6   in doing so, the BIA expected his supporters to "dare to ask  
7   the police for a record of Mr. Getsadze's arrest warrant."  
8   Getsadze is correct that "'asylum applicants can not always  
9   reasonably be expected to have an authenticated document from  
10  an alleged persecutor.'" *Cao He Lin v. U.S. Dep't of Justice*,  
11  428 F.3d 391, 404 (2d Cir. 2005) (quoting *Gui Cun Liu v.*  
12  *Ashcroft*, 372 F.3d 529, 532 (3d Cir. 2004)). But the BIA did  
13  not suggest that Getsadze needed authenticated documents  
14  memorializing the Georgian government's plans to persecute him.  
15  Rather, it wrote that reliable evidence would include "an arrest  
16  warrant, summons," or other documentary evidence that his  
17  apartment has been sealed or seized--that is, documents that  
18  the government would have issued to Getsadze in the ordinary  
19  course. That suggestion did not run afoul of *Cao He Lin*,  
20  particularly given that the attorney cited, but did not append,  
21  a "government record" of the \$50,000 allotment that purportedly  
22  spurred the search for Getsadze.

1 Getsadze moves, pursuant to Federal Rule of Evidence 201,  
2 for us to take judicial notice of articles reflecting various  
3 political agencies' concerns about Georgia's criminal  
4 prosecution of former President Saakashvili and other  
5 high-ranking officials of Getsadze's political party. To  
6 grant the motion would breach our statutory obligation to decide  
7 the petition based "only on the administrative record on which  
8 the order of removal is based." 8 U.S.C. § 1252(b)(4)(A).  
9 Getsadze's recourse is another motion to reopen before the BIA.  
10 8 U.S.C. § 1229a(c)(7)(C)(ii); *Xiao Xing Ni v. Gonzales*, 494  
11 F.3d 260, 269 (2d Cir. 2007).

12 For the foregoing reasons, the petition for review and the  
13 motion for judicial notice are DENIED. Because we have  
14 completed our review, Getsadze's pending motion for a stay of  
15 removal is DENIED as moot. Any pending request for oral  
16 argument in this petition is DENIED in accordance with Federal  
17 Rule of Appellate Procedure 34(a)(2), and Second Circuit Local  
18 Rule 34.1(b).

19 FOR THE COURT:  
20 Catherine O'Hagan Wolfe, Clerk